

AMENDED IN ASSEMBLY MAY 16, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2392

Introduced by Assembly Member Nazarian

February 18, 2016

An act to add and repeal Sections 17053.50 and 23650 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

AB 2392, as amended, Nazarian. Income taxes: credit: seismic retrofits.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, for taxable years beginning on or after January 1, 2017, and before January 1, 2022, would allow a tax credit under both laws in an amount equal to 30% of the qualified costs paid or incurred by a qualified taxpayer for any seismic retrofit construction on a qualified building, as provided. The bill would require a taxpayer, in order to be eligible for the credit, to obtain 2 certifications from the appropriate jurisdiction with authority for building code enforcement of the area in which the building is located: one prior to seismic retrofit construction that certifies that the building is an at-risk property, and a second subsequent to construction that certifies that the completed construction is seismic retrofit construction, as defined, and specifies a dollar amount of qualified costs. The bill would further require the taxpayer to provide the second certification to, and apply for *the* allocation of the credit ~~with~~ *with*, the Franchise Tax ~~Board, and Board. The bill~~ would require the ~~board~~ *Franchise Tax Board* to allocate credits on a

first-come-first-served basis. The bill would provide that the credit would have an aggregate cap under both laws of \$12,000,000 plus the amount of previously unallocated credit for each calendar year, as provided.

Existing law requires a bill that would authorize a new credit against the tax imposed by the Personal Income Tax Law or the Corporation Tax Law to contain specific goals, purposes, and objectives that the new credit will achieve and detailed performance indicators and data collection requirements for determining whether the new credit achieves these goals, purposes, and objectives.

This bill would make findings specifying the goals, purposes, and objectives of the above-described tax credits and detailing the performance indicators and data collection requirements for determining whether the credits meet these goals, purposes, and objectives.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.50 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.50. (a) For taxable years beginning on or after January
- 4 1, 2017, and before January 1, 2022, there shall be allowed to a
- 5 qualified taxpayer a credit against the “net tax,” as defined in
- 6 Section 17039, in an amount equal to 30 percent of the qualified
- 7 taxpayer’s qualified costs.
- 8 (b) For purposes of this section:
- 9 (1) “At-risk property” means a building that is deemed
- 10 hazardous and in danger of collapse in the event of a catastrophic
- 11 earthquake, including, but not limited to, soft story buildings,
- 12 nonductile concrete residential buildings, and pre-1994 concrete
- 13 residential buildings.
- 14 (2) “Qualified building” means a building that has been certified
- 15 as an at-risk property pursuant to subparagraph (A) of paragraph
- 16 (1) of subdivision (c). A qualified building includes a mobilehome
- 17 registered by the Department of Housing and Community
- 18 Development.
- 19 (3) “Qualified costs” means the costs paid or incurred by the
- 20 qualified taxpayer for any completed seismic retrofit construction

1 on a qualified building, including any engineering or architectural
2 design work necessary to permit or complete the seismic retrofit
3 construction less the amount of any grant provided by a public
4 entity for the seismic retrofit construction. “Qualified costs” do
5 not include any of the following costs paid or incurred by the
6 qualified taxpayer:

7 (A) Maintenance, including abatement of deferred or inadequate
8 maintenance, and correction of violations unrelated to the seismic
9 retrofit construction.

10 (B) Repair, including repair of earthquake damage.

11 (C) Seismic retrofit construction required by local building
12 codes as a result of addition, repair, building relocation, change
13 of use, or occupancy.

14 (D) Other work or improvement required by local building or
15 planning codes as a result of the intended seismic retrofit
16 construction.

17 (E) Rent reductions or other associated compensation,
18 compliance actions, or other related coordination involving the
19 qualified taxpayer and any other party, including a tenant, insurer,
20 or lender.

21 (F) Replacement of existing building components, including
22 equipment, except as needed to complete the seismic retrofit
23 construction.

24 (G) Bracing or securing nonpermanent building contents.

25 (H) The offset of costs, reimbursements, or other costs
26 transferred from the qualified taxpayers to others.

27 (I) Any amount paid by the qualified taxpayer to the jurisdiction
28 with authority for building code enforcement for issuing the
29 certifications required pursuant to subparagraphs (A) and (B) of
30 paragraph (1) of subdivision (c).

31 (4) “Qualified taxpayer” means a taxpayer that is an owner of
32 a qualified building located in this state. A taxpayer that owns a
33 proportional share of a qualified building in this state may claim
34 the credit allowed by this section based on the taxpayer’s share of
35 the qualified costs.

36 (5) (A) “Seismic retrofit construction” means alteration of a
37 qualified building or its components to substantially mitigate
38 seismic damage. Seismic retrofit construction shall be for work
39 performed, and for which qualified costs were paid or incurred,

1 on or after January 1, 2017. Seismic retrofit construction shall
2 include, but not be limited to, the following:

- 3 (i) Anchoring the structure to the foundation.
- 4 (ii) Bracing cripple walls.
- 5 (iii) Bracing hot water heaters.
- 6 (iv) Installing automatic gas shutoff valves.
- 7 (v) Repairing or reinforcing the foundation to improve the
8 integrity of the foundation against seismic damage.
- 9 (vi) Anchoring fuel storage.
- 10 (vii) Installing an earthquake resistant bracing system for
11 mobilehomes that are registered with the Department of Housing
12 and Community Development.

13 (B) Notwithstanding subparagraph (A), seismic retrofit
14 construction does not include construction performed to bring a
15 building into compliance with local building codes.

16 (c) To be eligible for the credit, the following shall apply:

17 (1) The qualified taxpayer shall do all of the following:

18 (A) Prior to the seismic retrofit construction, obtain certification
19 from the appropriate jurisdiction with local building code
20 enforcement authority that the building is an at-risk property.

21 (B) Obtain certification from the appropriate jurisdiction with
22 authority for building code enforcement, upon a review of the
23 building, that the completed construction satisfies the definition
24 of seismic retrofit construction. The certification shall identify
25 what part of the completed construction, if any, is not seismic
26 retrofit construction, and specify a dollar amount of qualified costs.

27 (C) Request and be granted an allocation of the credit from the
28 Franchise Tax Board. To request an allocation, the taxpayer shall
29 sign and submit to the Franchise Tax Board an application to
30 receive a credit for the seismic retrofit construction and provide a
31 copy of the certification obtained pursuant to subparagraph (B).

32 (D) Retain for his or her records a copy of the certifications
33 specified in subparagraphs (A) and (B).

34 (2) The jurisdiction with authority for building code enforcement
35 in which a qualified building is located has entered into an
36 agreement with the state to provide certifications pursuant to this
37 section and to not seek reimbursement pursuant to Section 6 of
38 Article XIII B of the California Constitution for any costs incurred
39 in providing those certifications.

1 (d) (1) The credit amount allowed in subdivision (a) shall be
2 claimed by a qualified taxpayer at the rate of one-fifth of the credit
3 amount for the taxable year in which the credit is allocated, and
4 one-fifth of the credit amount for each of the subsequent four
5 taxable years.

6 (2) In the case where the credit allowed under this section
7 exceeds the “net tax,” as defined in Section 17039, for a taxable
8 year, the excess credit may be carried over to reduce the “net tax”
9 in the following taxable year, and succeeding four taxable years,
10 if necessary, until the credit has been exhausted.

11 (e) (1) The total amount of credit that may be allocated pursuant
12 to this section and Section 23650 shall not exceed the sum of the
13 following:

14 (A) Twelve million dollars (\$12,000,000) for the 2017 calendar
15 year and each calendar year thereafter.

16 (B) The amount of previously unallocated credits allowed under
17 ~~this section~~ *section and Section 23650*.

18 (2) Upon receipt of the application and certification described
19 in subparagraph (C) of paragraph (1) of subdivision (c), the
20 Franchise Tax Board shall notify the taxpayer of the amount, if
21 any, of credit allowed and allocate the credit to a qualified taxpayer
22 on a first-come-first-served basis.

23 (3) (A) The *qualified* taxpayer shall claim the credit on a timely
24 filed original return.

25 (B) The determination of the Franchise Tax Board with respect
26 to the allocation of the credit, and whether a return has been timely
27 filed for purposes of this subdivision, may not be reviewed in any
28 administrative or judicial proceeding.

29 (C) Any disallowance of a credit claimed due to a determination
30 under this subdivision, including the application of the limitation
31 specified in paragraph (1), shall be treated as a mathematical error
32 appearing on the return. Any amount of tax resulting from that
33 disallowance may be assessed by the Franchise Tax Board in the
34 same manner as provided by Section 19051.

35 (f) This credit shall be in lieu of any other credit or deduction
36 that the qualified taxpayer may otherwise claim pursuant to this
37 part with respect to qualified costs.

38 (g) The Franchise Tax Board may prescribe rules, guidelines,
39 or procedures necessary or appropriate to carry out the purposes
40 of this section, including any guidelines regarding the allocation

1 of the credit allowed under this section. Chapter 3.5 (commencing
2 with Section 11340) of Part 1 of Division 3 of Title 2 of the
3 Government Code does not apply to any rule, guideline, or
4 procedure prescribed by the Franchise Tax Board pursuant to this
5 section.

6 (h) This section shall remain in effect only until December 1,
7 2022, and as of that date is repealed.

8 SEC. 2. Section 23650 is added to the Revenue and Taxation
9 Code, to read:

10 23650. (a) For taxable years beginning on or after January 1,
11 2017, and before January 1, 2022, there shall be allowed to a
12 qualified taxpayer a credit against the “tax,” as defined in Section
13 23036, in an amount equal to 30 percent of the qualified taxpayer’s
14 qualified costs.

15 (b) For purposes of this section:

16 (1) “At-risk property” means a building that is deemed
17 hazardous and in danger of collapse in the event of a catastrophic
18 earthquake, including, but not limited to, soft story buildings,
19 nonductile concrete residential buildings, and pre-1994 concrete
20 residential buildings.

21 (2) “Qualified building” means a building that has been certified
22 as an at-risk property pursuant to subparagraph (A) of paragraph
23 (1) of subdivision (c). A qualified building includes a mobilehome
24 registered by the Department of Housing and Community
25 Development.

26 (3) “Qualified costs” means the costs paid or incurred by the
27 qualified taxpayer for any completed seismic retrofit construction
28 on a qualified building, including any engineering or architectural
29 design work necessary to permit or complete the seismic retrofit
30 construction less the amount of any grant provided by a public
31 entity for the seismic retrofit construction. “Qualified costs” do
32 not include any of the following costs paid or incurred by the
33 qualified taxpayer:

34 (A) Maintenance, including abatement of deferred or inadequate
35 maintenance, and correction of violations unrelated to the seismic
36 retrofit construction.

37 (B) Repair, including repair of earthquake damage.

38 (C) Seismic retrofit construction required by local building
39 codes as a result of addition, repair, building relocation, change
40 of use, or occupancy.

1 (D) Other work or improvement required by local building or
2 planning codes as a result of the intended seismic retrofit
3 construction.

4 (E) Rent reductions or other associated compensation,
5 compliance actions, or other related coordination involving the
6 qualified taxpayer and any other party, including a tenant, insurer,
7 or lender.

8 (F) Replacement of existing building components, including
9 equipment, except as needed to complete the seismic retrofit
10 construction.

11 (G) Bracing or securing nonpermanent building contents.

12 (H) The offset of costs, reimbursements, or other costs
13 transferred from the qualified taxpayers to others.

14 (I) Any amount paid by the qualified taxpayer to the jurisdiction
15 with authority for building code enforcement for issuing the
16 certifications required pursuant to subparagraphs (A) and (B) of
17 paragraph (1) of subdivision (c).

18 (4) “Qualified taxpayer” means a taxpayer that is an owner of
19 a qualified building located in this state. A taxpayer that owns a
20 proportional share of a qualified building in this state may claim
21 the credit allowed by this section based on the taxpayer’s share of
22 the qualified costs.

23 (5) (A) “Seismic retrofit construction” means alteration of a
24 qualified building or its components to substantially mitigate
25 seismic damage. Seismic retrofit construction shall be for work
26 performed, and for which qualified costs were paid or incurred,
27 on or after January 1, 2017. Seismic retrofit construction shall
28 include, but not be limited to, the following:

29 (i) Anchoring the structure to the foundation.

30 (ii) Bracing cripple walls.

31 (iii) Bracing hot water heaters.

32 (iv) Installing automatic gas shutoff valves.

33 (v) Repairing or reinforcing the foundation to improve the
34 integrity of the foundation against seismic damage.

35 (vi) Anchoring fuel storage.

36 (vii) Installing an earthquake resistant bracing system for
37 mobilehomes that are registered with the Department of Housing
38 and Community Development.

(B) Notwithstanding subparagraph (A), seismic retrofit construction does not include construction performed to bring a building into compliance with local building codes.

(c) To be eligible for the credit, the following shall apply:

(1) The qualified taxpayer shall do all of the following:

(A) Prior to the seismic retrofit construction, obtain certification from the appropriate jurisdiction with local building code enforcement authority that the building is an at-risk property.

(B) Obtain certification from the appropriate jurisdiction with authority for building code enforcement, upon a review of the building, that the completed construction satisfies the definition of seismic retrofit construction. The certification shall identify what part of the completed construction, if any, is not seismic retrofit construction and specify a dollar amount of qualified costs.

(C) Request and be granted an allocation of the credit from the Franchise Tax Board. To request an allocation, the taxpayer shall sign and submit to the Franchise Tax Board an application to receive a credit for the seismic retrofit construction and provide a copy of the certification obtained pursuant to subparagraph (B).

(D) Retain for ~~his or her~~ *its* records a copy of the certifications specified in subparagraphs (A) and (B).

(2) The jurisdiction with authority for building code enforcement in which a qualified building is located has entered into an agreement with the state to provide certifications pursuant to this section and to not seek reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for any costs incurred in providing those certifications.

(d) (1) The credit amount allowed in subdivision (a) shall be claimed by a qualified taxpayer at the rate of one-fifth of the credit amount for the taxable year in which the credit is allocated, and one-fifth of the credit amount for each of the subsequent four taxable years.

(2) In the case where the credit allowed under this section exceeds the “tax,” as defined in Section 23036, for a taxable year, the excess credit may be carried over to reduce the “tax” in the following taxable year, and succeeding four taxable years, if necessary, until the credit has been exhausted.

(e) (1) The total amount of credit that may be allocated pursuant to this section and Section 17053.50 shall not exceed the sum of the following:

1 (A) Twelve million dollars (\$12,000,000) for the 2017 calendar
2 year and each calendar year thereafter.

3 (B) The amount of previously unallocated credits allowed under
4 ~~this section~~ *section and Section 17053.50*.

5 (2) Upon receipt of the application and certification described
6 in subparagraph (C) of paragraph (1) of subdivision (c), the
7 Franchise Tax Board shall notify the taxpayer of the amount, if
8 any, of credit allowed and allocate the credit to a qualified taxpayer
9 on a first-come-first-served basis.

10 (3) (A) The *qualified* taxpayer shall claim the credit on a timely
11 filed original return.

12 (B) The determination of the Franchise Tax Board with respect
13 to the allocation of the credit, and whether a return has been timely
14 filed for purposes of this subdivision, may not be reviewed in any
15 administrative or judicial proceeding.

16 (C) Any disallowance of a credit claimed due to a determination
17 under this subdivision, including the application of the limitation
18 specified in paragraph (1), shall be treated as a mathematical error
19 appearing on the return. Any amount of tax resulting from that
20 disallowance may be assessed by the Franchise Tax Board in the
21 same manner as provided by Section 19051.

22 (f) This credit shall be in lieu of any other credit or deduction
23 that the qualified taxpayer may otherwise claim pursuant to this
24 part with respect to qualified costs.

25 (g) The Franchise Tax Board may prescribe rules, guidelines,
26 or procedures necessary or appropriate to carry out the purposes
27 of this section, including any guidelines regarding the allocation
28 of the credit allowed under this section. Chapter 3.5 (commencing
29 with Section 11340) of Part 1 of Division 3 of Title 2 of the
30 Government Code does not apply to any rule, guideline, or
31 procedure prescribed by the Franchise Tax Board pursuant to this
32 section.

33 (h) This section shall remain in effect only until December 1,
34 2022, and as of that date is repealed.

35 SEC. 3. For the purposes of complying with Section 41 of the
36 Revenue and Taxation Code, the Legislature finds and declares
37 all of the following with respect to Sections 17053.50 and 23650
38 of the Revenue and Taxation Code:

39 (a) The specific goals, purposes, and objectives that the tax
40 credits will achieve are as follows:

1 (1) Leveraging sixty million dollars (\$60,000,000) in private
2 investment.

3 (2) Creating thousands of engineering or construction jobs.

4 (3) Mitigating seismic damage to save lives.

5 (b) The detailed performance indicators for the Legislature to
6 use when measuring whether the tax credits meet those specific
7 goals, purposes, and objectives are as follows:

8 (1) The amount of private sector investment enabled by
9 allocation of the tax credits.

10 (2) The number of engineering and construction jobs created
11 as a result of this investment.

12 (3) The estimated number of lives saved by the seismic
13 retrofitting of buildings facilitated by the tax credits.

14 (c) The data collection requirements to enable the Legislature
15 to determine whether the tax credits are meeting, failing to meet,
16 or exceeding those specific goals, purposes, and objectives are as
17 follows:

18 (1) To assist the Legislature in measuring whether the tax credits
19 meet the goals, purposes, and objectives specified in subdivision
20 (a), the Legislative Analyst shall review the effectiveness of the
21 tax credits and may request information from the Franchise Tax
22 Board and any state governmental entity with authority relating
23 to the seismic retrofit construction of at-risk properties.

24 (2) The Franchise Tax Board and any state governmental entity
25 with authority relating to the seismic retrofit construction of at-risk
26 properties shall provide to the Legislative Analyst any data
27 requested by the Legislative Analyst pursuant to this subdivision.

28 SEC. 4. This act provides for a tax levy within the meaning
29 of Article IV of the Constitution and shall go into immediate effect.